

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service) Application No. NUSF-48/PI-104
Commission, on its own motion, seeking to)
investigate issues related to providing)
dedicated universal service support for)
wireless telecommunications services.)

COMMENTS OF THE RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA

I. INTRODUCTION AND SUMMARY

On August 9, 2005, the Nebraska Public Service Commission (“Commission”) opened the above-captioned docket to investigate issues related to providing dedicated universal service support for wireless telecommunications service. Specifically, the Commission requested comment on the following issues:

1. Services currently receiving support and
2. Issues related to providing support for wireless telecommunications services including the nature and extent of any support, eligibility, cost recovery related to wireless infrastructure, nature and extent of regulatory oversight of carriers receiving support, and ownership and sharing of supported wireless infrastructure

The Rural Telecommunications Coalition of Nebraska¹ (“RTCN”), consists entirely of incumbent local exchange carriers (“LEC”) providing basic local exchange and other telecommunications services to rural Nebraskans. All of the members of the RTCN have been designated as both Eligible Telecommunications Carriers (“ETC”) and Nebraska Eligible

¹ The Rural Telecommunications Coalition of Nebraska (“RTCN”) includes Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Curtis Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges Inc., Keystone-Arthur Telephone Company, Mainstay Communications, Plainview Telephone Company, Wauneta Telephone Company, and WesTel Systems f/k/a Hooper Telephone Company. The RTCN was formerly known as the Nebraska Independent Coalition for Embedded-Based Cost Support (“NICE-BCS”).

Telecommunications Carriers (“NETC”), obligating them to specific responsibilities in exchange for federal and state universal service support in order to provide telecommunications services in high-cost areas. The following comments represent the views of the RTCN.

RTCN is concerned that the establishment of a wireless infrastructure fund could result in rural LECs – the primary providers of universal service in Nebraska – being denied sufficient and predictable support from the Nebraska Universal Service Fund (“NUSF”). Furthermore, wireless carriers willing to comply with the accompanying obligations already have access to the NUSF. However, should the Commission ascertain that wireless infrastructure in sparsely-populated areas is both inadequate and requires state high-cost funding, it must implement a wireless fund with the same care and diligence as it exercised during the implementation of the NUSF. Nebraska consumers simply cannot afford the cost of replicating the numerous errors made by Federal Communications Commission (“FCC”) in granting wireless carriers access to federal support mechanisms. Accordingly, the Commission must ensure any state wireless infrastructure fund link network investment – specifically investment in high-cost areas – with support amounts. Additionally, supported network infrastructure should be limited to a single wireless carrier, as Nebraskans cannot afford to support multiple wireless networks in the same high-cost area. Recently, a universal service reform plan has been proposed for wireless ETCs in the federal jurisdiction that includes these critical components. Accordingly, RTCN recommends that any state wireless infrastructure fund closely mirror this plan. Finally, the Commission should require wireless infrastructure fund recipients to submit to state commission oversight of consumer protection and service quality.

II. THE NUSF SUPPORTS STATE-OF-THE-ART COMMUNICATIONS NETWORKS IN HIGH-COST RURAL AREAS

Currently, the NUSF supports essential state-of-the-art telecommunications networks in high-cost areas of Nebraska, enabling rural Nebraskans to receive reasonably comparable services as those received by urban residents at reasonably comparable rates -- as required by the Telecommunications Act of 1996 (“the Federal Act”).² By basing NUSF support on the cost of providing service in high-cost areas, carriers have an opportunity to recover the cost of their investments. Rural Nebraska LECs have responded to this incentive for investment – which is not available in many states – by deploying some of the most advanced networks in the nation. Absent NUSF support, these facility investments would be not be economical – and as a result, simply not made.

However, the NUSF was not established overnight. The Commission spent almost five years in implementing the NUSF in accordance with the Federal Act and the Nebraska Telecommunications Universal Service Fund Act,³ culminating with the establishment of the long-term mechanism, the Support Allocation Mechanism (“SAM”).⁴ Currently, the SAM provides specific, sufficient and predictable support to all eligible NETCs.⁵ Before diverting funds to a wireless infrastructure fund, it is imperative that the Commission ensure that current recipients – who have been incited by the Commission to invest millions of dollars in network facilities – will continue to receive sufficient support from the NUSF.

The current NUSF provides support to qualified recipients on a competitively-neutral basis.⁶

² U.S.C. §254(b)(3)

³ See Application No. C-1628/NUSF, *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access reform*, Findings and Conclusions, entered January 13, 1999

⁴ See Application No. NUSF-26, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service mechanism*, Findings and Conclusions, entered November 3, 2004 (“NUSF-26 Order”)

⁵ NUSF-26 Order, para. 11

⁶ *Ibid.*, para. 14-17

In other words, wireless carriers already have access to the NUSF – should they choose to seek it.⁷ This situation is not unique to Nebraska, as wireless carriers throughout the nation rarely seek access to state high cost funds.⁸ Even more amazing, wireless carriers who have been granted access to state high cost funds have on occasion simply not requested the funds to which they are entitled.⁹ The only rational conclusion that can be drawn from this is that that wireless carriers have determined that compliance with the requirements for access to state high-cost funds outweigh the benefits. Accordingly, before embarking upon a long proceeding to develop a wireless infrastructure fund – complete with the attendant responsibilities that must accompany access to support mechanisms -- the Commission should ensure that the demand actually exists.

III. SHOULD THE COMMISSION DECIDE TO CREATE A STATE WIRELESS INFRASTRUCTURE FUND IT MUST AVOID DUPLICATING THE FCC’S FAILED EXPERIMENT IN USING HIGH-COST FUNDS TO PROMOTE COMPETITION

After several years of using federal support mechanisms to attempt to create artificial competition in high-cost areas, the FCC’s experiment can only be described as an abject failure. Wireless carriers were granted ETC status for little more than promising to bring “competition” to rural high-cost areas – ignoring the fact that these same wireless carriers had been operating (and presumably competing) in the same areas for years. Wireless carriers quickly recognized that the FCC exercised very little oversight over the use of federal high-cost funds provided to wireless ETCs and responded by obtaining millions of dollars for little more than serving their existing customer

⁷ While other competitive carriers have sought and received access to the NUSF, no wireless carrier has sought access.

⁸ Many of the early requests from wireless carriers for ETC designation also included a concurrent request for access to the state high cost funds. However, RTCN is not aware of a wireless carrier requesting access to a state high cost fund since August 2000.

⁹ Despite being granted access to the Colorado High Cost Support Mechanism (and eligible for monthly support in excess of \$30,000) in November 2002, Western Wireless has never requested the funds.

bases. Unfortunately, the result was predictable -- an explosion in the amount of universal service funds siphoned off by wireless ETCs (2005 estimate -- \$800 million).¹⁰ Very little evidence exists that the FCC's experiment in promoting uneconomic competition in the service areas of rural LECs has advanced or promoted universal service, as required by the Federal Act. Instead, this "competition" has unnecessarily increased the cost of universal service to the nation's consumers and has placed these funds and the national policy of universal service in jeopardy.

The FCC's "identical support" policy -- enacted under the guise of competitive neutrality -- is the primary reason for this failed experiment. Unlike universal service support provided to rural LECs -- which is based upon investments made and costs incurred to provide service to high-cost customers -- support provided to wireless ETCs bears absolutely no relationship to costs incurred to provide wireless service to sparsely-populated areas. Instead, wireless ETC support is based upon the rural LEC's cost of providing ubiquitous wireline service, creating a disconnection between network investment and the receipt of high-cost support. As a result wireless ETCs have used universal service support primarily to enhance their bottom line, as evidenced by this quote from a leading executive in the wireless industry:

The USF subsidy represents an incremental revenue source, which we believe should improve our revenue and EBITDA estimates by \$6-8 million during the first quarter and \$24-30 million during 2003 as *the incremental revenue is almost all margin*.¹¹

Should the Commission determine that a state wireless infrastructure fund is necessary, it is

¹⁰ Federal universal service support for competitive ETCs was approximately \$20 million in 2001.

¹¹"Western Wireless (WWCA): USF Provides Upside to Our EBITDA Estimate," Salomon Smith Barney Research Note, issued January 9, 2003, p. 2 (*emphasis added*). Quote from Western Wireless CEO John Stanton in a meeting with the investment community. According to USAC projections, Western Wireless will receive \$44 million in federal high-cost support in 2005.

imperative that the fund include a connection between network investment and high-cost support -- similar to comparable mechanisms available to rural LECs.

IV. THE FCC IS CONSIDERING A UNIVERSAL SERVICE REFORM PROPOSAL THAT CONTAINS MANY OF THE ESSENTIAL COMPONENTS FOR A WIRELESS INFRASTRUCTURE FUND

Recently, the Federal-State Joint Board on Universal Service sought comment on four federal universal service reform proposals, developed in large part by members of various state commissions. One of the proposals, the Universal Service Endpoint Reform Plan (“USERP”), proposes several significant changes in receipt of federal universal service support by wireless ETCs.¹² Many of these changes are long overdue and would greatly assist in correcting the extensive shortcomings of the current provision of federal high-cost support to wireless ETCs. The USERP describes its primary fundamental change, as follows:

Wireless CETCs would no longer be funded by “portable” universal service support that is based upon the costs of incumbent wireline carriers. This policy change recognizes the fundamental cost, regulatory, and rate differences between wireless and wireline service. There are also functional differences that limit substitution of one service for the other.¹³

The USERP would establish a separate fund for wireless ETCs, the purpose of which would be to substantially improve wireless coverage in unserved areas. State commissions would have the responsibility of identifying areas lacking quality wireless service. Wireless carriers would competitively bid for grants from the wireless fund to construct infrastructure in these areas. The

¹² USERP authors include Peter Bluhm of the Vermont Public Service Board, Joel Shifman of the Maine Public Utilities Commission and Jeff Pursley of the Nebraska Public Service Commission.

¹³ See *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 05J-1, released August 17, 2005, p.26

state commission would retain oversight of the grant monies to ensure they are properly expended.

The USERP remedies several problems with the FCC’s current method of funding wireless ETCs. First, by linking high-cost support to network investment in areas lacking wireless service, the USERP ensures high-cost funds are used only for their intended purpose.¹⁴ Second, by requiring network investment in high-cost areas in exchange for high-cost support, the USERP converts the current *disincentive* for wireless ETCs to invest in facilities in high-cost areas to an incentive to invest.¹⁵ Third, by requiring wireless carriers to competitively bid for high-cost support, the USERP introduces a cost component into the determination of support for wireless ETCs, thereby ensuring that the wireless carrier receives sufficient – but not excessive – high-cost support. Finally, the competitive bid requirement in the USERP will also discontinue the FCC’s current practice of funding multiple wireless carriers in areas unable to support a single provider without support mechanisms. The reforms advocated by the USERP are far more likely to improve wireless service in rural areas than the FCC’s current policies – and very likely at a fraction of the current cost. Should the Commission create a state wireless infrastructure fund, RTCN strongly encourages that it be modeled after the USERP.

Wireless carriers will undoubtedly assert that many of the changes are somehow not “technologically” neutral – the same tired argument trotted out each time a wireless carrier faces any roadblock to its receipt of “obligation-free” monies.¹⁶ Contrary to claims of wireless carriers, competitive neutrality does not require identical outcomes – only identical treatment.

¹⁴ U.S.C. §254(e) requires that federal universal service support only be used for the provision, maintenance and upgrading of facilities for which the support is intended.

¹⁵ Currently, the FCC provides universal service support to wireless ETCs regardless of whether any network investment is made in high-cost areas. This policy has created a disincentive to invest, as carriers making no investment actually reap higher returns than those who do.

¹⁶ The vociferous response by wireless carriers to the recent modest changes to ETC designation process by the FCC is evidence of this reaction.

V. WIRELESS CARRIERS RECEIVING SUPPORT FROM A WIRELESS INFRASTRUCTURE FUND SHOULD BE SUBJECT TO COMMISSION OVERSIGHT

Participation in a state wireless infrastructure fund should be voluntary, not mandatory. However, Nebraska consumers of communications services provide these high-cost funds with the expectation that recipients adhere to attendant responsibilities and requirements, one of which should be state commission oversight of service quality and customer service standards.¹⁷ One of the principal responsibilities of state commissions is consumer protection. State commissions have personnel, procedures and processes in place to respond to consumer concerns -- the FCC, quite frankly, does not. Accordingly, for recipients of state support mechanisms, this responsibility should reside with the state commission, not the FCC. The National Association of State Utility Consumer Advocates (“NASUCA”) supports this position, as follows:

NASUCA also urges more stringent requirements for ETC designation. Such designation should be granted only to entities providing communications service that is reliable, affordable and comparable to that of current incumbent providers of last resort. NASUCA presumes that providers using wireless and other technologies would continue to be eligible for ETC status. However, NASUCA recommends that eligible services by such providers must constitute basic, reliable and affordable connectivity. *In addition, any ETC must be subject to certain aspects of state regulation even if it provides service using a technology that is not otherwise regulated by the state.*¹⁸

Several other state commissions agree with the recommendations of NASUCA and have required wireless carriers to submit to limited oversight in exchange for access to high-cost support

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RTCN has previously encouraged the Commission to require state commission oversight in exchange for ETC designation. See *In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to add rules for designating eligible telecommunications carriers in Nebraska for the purpose of receiving federal universal service support*. Rule and Regulation No. 165, RTCN comments, filed June 6, 2005

¹⁸ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Comments of NASUCA, filed May 5, 2003, p. 3 (*emphasis added*).

funds. As permitted under the 1996 Act,¹⁹ the Colorado Public Utilities Commission (“CPUC”) oversees the terms and conditions under which wireless carriers provide universal service. This oversight includes, but is not limited to, the following:

- 1) Consumer complaints;
- 2) Termination of service;
- 3) Billing and collections;
- 4) Bill credits for service interruptions;
- 5) Network maintenance and operation;
- 6) Directory services; and
- 7) Timeframes for offering service.

Wireless carriers will undoubtedly contend that compliance with the Cellular Telecommunications and Internet Association’s (“CTIA”) Consumer Code demonstrates their commitment to consumer protection and service quality standards. However, the CTIA Consumer Code was developed primarily to forestall several state commissions from imposing real consumer protections in response to an avalanche of consumer complaints about the practices of the wireless industry. In other words, the CTIA Consumer Code was designed to protect wireless carriers, not wireless customers. Accordingly, RTCN strongly recommends that wireless carriers electing to seek state infrastructure funding also be required to submit to state commission oversight of service quality and customer service.

VI. CONCLUSION

RTCN remains unconvinced that a separate state high-cost fund is needed to support wireless network investment in Nebraska, as wireless carriers currently have access to the NUSF. However, should the Commission determine a separate wireless infrastructure fund is necessary, its first priority must be to ensure that rural LECs -- the primary providers of universal service in high-cost

¹⁹ 47 U.S.C. § 332(c)(3)

areas of Nebraska – continue to receive sufficient and predictable support from the NUSF. In creating a wireless infrastructure fund, the Commission can learn from the FCC’s many mistakes in providing wireless carriers access to federal support mechanisms. Specifically, a state infrastructure fund must link investment in high-cost areas with support amounts and limit support to a single wireless carrier in each high-cost area. Fortunately, the FCC is currently considering a universal service reform proposal, the USERP, which contains many of these long overdue changes for providing high-cost support for wireless carriers. Accordingly, the Commission should model any state wireless infrastructure fund after the USERP. Finally, the Commission should oversee the service quality and customer service practices of the recipients, in order to ensure that these consumer-provided funds are sufficiently protected.

Dated this 9th day of September, 2005.

RURAL TELECOMMUNICATIONS COALITION
OF NEBRASKA (“RTCN”)

Arapahoe Telephone Company,
Benkelman Telephone Company,
Cozad Telephone Company,
Curtis Telephone Company,
Glenwood Telephone Membership Corporation,
Hartman Telephone Exchanges, Inc.,
Hooper Telephone Company d/b/a WesTel Systems
Keystone-Arthur Telephone Company,
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2005, the original and five (5) paper copies of the foregoing Comments were served upon Andy S. Pollock, Executive Director of the Commission, by hand delivery.

Timothy F. Clare

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